

Consolidation Coal Company and United Mine Workers of America, International Union and United Mine Workers of America, District 4 and their Local Unions No. 6321 and 1980.
Case 6-CA-22722

April 14, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

On September 11, 1991, Administrative Law Judge Richard H. Beddow Jr. issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel and the Union filed answering briefs.¹

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,² and conclusions and to adopt the recommended Order as modified.³

¹ The Respondent also filed a reply brief.

² In light of the type of violation alleged and found, i.e., a refusal to furnish information, we find it unnecessary to pass on the judge's determination at sec. III, par. 6 of his decision that the Respondent attempted to exclude certain operations from the terms of its collective-bargaining agreement with the Union.

³ The Respondent has excepted to the judge's finding that the Respondent must provide the information requested in the 48-page checklist, designated as C.P. Exh. 26, which was submitted by the Union following the hearing. At the hearing, the parties stipulated to a checklist procedure in order to determine what information had been provided by the Respondent with respect to the original information request, a five-page letter dated April 18, 1990. The Respondent never stipulated however, to the relevance of the Charging Party's exhibit. Because the information requested in the April 18, 1990 letter has been found to be potentially relevant, and because the complaint dates the violation from the Respondent's failure to comply with the April 18 letter, we find that the remedy must be based on the April 18 letter, and not on the C.P. Exh. 26. Par. 2(a) of the recommended Order will be modified accordingly. If the parties have any dispute over any differences between the April letter and the C.P. Exh. 26, they should first attempt to adjust their dispute through the process of collective bargaining. Compare *Minnesota Mining & Mfg. Co.*, 261 NLRB 27, 32 (1982).

Also in par. 2(a) of his recommended Order, the judge provided a 20-day time period for the Respondent to respond to the Union's information request. We shall delete this requirement as unwarranted.

In par. 1(b) of his recommended Order, the judge used the broad cease-and-desist language "in any other manner." However, we have considered this case in light of the standards set forth in *Hickmott Foods*, 242 NLRB 1357 (1979), and have concluded that the narrow cease-and-desist language "in any like or related manner" is appropriate. We shall modify the judge's recommended Order accordingly.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Consolidation Coal Company, Pittsburgh, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(b).

"(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act."

2. Substitute the following for paragraph 2(a).

"(a) Furnish the Union with the requested information as described in the Union's letter dated April 18, 1990."

3. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain in good faith with the Union, United Mine Workers Of America, as the exclusive bargaining agent of our employees in the appropriate bargaining unit by failing and refusing to furnish the Union with certain requested information, which is necessary and relevant to the Union's performance of its function as the exclusive bargaining agent of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed to them in Section 7 of the National Labor Relations Act.

WE WILL furnish to the Union all information requested by the Union's letter dated April 18, 1990.

CONSOLIDATION COAL COMPANY

Suzanne C. McGinnis, Esq., for the General Counsel.

Darriel L. Fassio, Esq. and *Anthony J. Polito, Esq.*, of Pittsburgh, Pennsylvania, for the Respondent.

Michael Dinnerstein, Esq. and *Judith A. Scott, Esq.*, of Washington, D.C., for the Charging Party.

DECISION

STATEMENT OF THE CASE

RICHARD H. BEDDOW JR., Administrative Law Judge. This matter was heard in Pittsburgh, Pennsylvania, on February 11 and 12, 1991, on a consolidated record with Case 6-CA-

22561. By order dated March 6, 1991, the proceedings were severed and subsequently briefs were filed by Respondent and the General Counsel. A decision, JD-156-91, was issued in the related proceeding on June 7, 1991. This proceeding is based on a charge filed May 21, 1990, by United Mine Workers of America, International Union and United Mine Workers of America, District 4 and their Local Unions No. 6321 and 1980. The Regional Director's complaint dated December 21, 1990,¹ alleges that Respondent, Consolidation Coal Company of Pittsburgh, Pennsylvania, violated Section 8(a)(1) and (5) of the National Labor Relations Act by failing and refusing to furnish the Union with certain information needed by the Union to police and enforce the parties' collective-bargaining agreement.

On review of the entire record in this case and from my observation of the witnesses and their demeanor, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent is engaged in the mining and nonretail sale of coal at facilities in Pennsylvania. It is wholly owned by DuPont Energy Co. and it admits that it and Consol Pennsylvania Coal Company and Enlow Fork and Mining Company are subsidiaries of the same parent company and have the same registered office address. It annually ships goods valued in excess of \$50,000 from its locations in Pennsylvania to points outside that Commonwealth and it admits that all times material it has been an employer engaged in operation affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act. It also admits that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

As noted in the related decision in Case 6-CA-22561, Respondent is and has been a signatory to collective-bargaining agreements between the Bituminous Coal Operators Association (BCOA) and the International Union. The National Bituminous Coal Workers Agreement (NBCWA) negotiated in 1988 is effective from February 1, 1988, to January 31, 1993. B. R. Brown, president of Respondent, was the chief negotiator for the employers' association.

The production of bituminous coal involves the depletion of resources at work locations, and because various mining arrangements can adversely impact on job security, the Union's main objective in the 1988 negotiations was to secure a provision that would offer protection to laid-off miners. Consequently, for the first time, the agreement included a provision entitled, "Article II, Job Opportunity and Benefit Security (JOBS)" wherein the Union's concerns about job security are expressly recognized.²

¹ All following dates are in 1990 unless otherwise indicated.

² The portions of art. II relevant to this proceeding are as follows:

A. Non Signatory Operations

1. Except as modified in Section C, the first three out of every five new job openings for work of a nature covered by this agreement at any existing, new, or newly acquired non-signatory bituminous coal operation of the Employer shall be filled by classified laid off employees on the panels of the Employer's operations covered by this agreement. If the newly acquired non-signatory operation has a panel of laid-off employees estab-

In effect, the contract provides that employees laid off from Respondent's operations have the right to complete panel forms requesting reemployment to any job for which he or she is qualified at other mines of Respondent. The panel forms are then retained by Respondent and the Union. The contract also covers the operation of all coal lands and coal preparation facilities held by the signatory, its subsidiaries, and affiliates, whether in operation at the time of the contract execution or at any time thereafter. The contract also bars the leasing or licensing of coal lands, coal production, or preparation facilities to avoid the application of the contract, and the licensing of coal lands if such licensing results in the loss of bargaining unit work.

Respondent admits that during negotiations for the NBCWA of 1988, President B. R. Brown agreed that article II rights would extend to Respondent's Bailey Mine. District 4 President Ed Yomkovich testified that at the contract explanation meetings on the NBCWA of 1988, the local union presidents discussed rights and obligations under article II. At that time, the local union presidents, including Yankovich who was then a local president, were informed about Brown's statements at the bargaining table and during the same time period, the Union also became aware of Respondent's plans to expand its Bailey operation (referred to as Bailey 1) and create Bailey 2.

Respondent built Bailey 1 as a new mine in Greene County, Pennsylvania, in 1984, naming it after a former executive, George Bailey. According to press accounts, the Bailey Mine operates on Respondent's reserves, however, Respondent Consol created a wholly owned subsidiary, Consol Pennsylvania Coal Company (CPCC), in whose name the mine was operated. Bailey was treated like any other mine of Consol and Consol itself consistently referred to Bailey as one of its own mines in various documents and public statements. In late 1984, as Bailey 1 was almost ready to open, Consol began work on a so-called companion mine to Bailey, which Respondent initially referred to as Bailey 2. This title also used by the U.S. Department of Labor and the press. Bailey 2 was a physical continuation of the Bailey 1 Mine with miners entering both mines through the same portal and coal from both mines existing on the same conveyor belt.

On March 14, 1990, Enlow Fork requested and thereafter was granted a transfer of the applicable mining permit from

lished pursuant to a valid collective bargaining agreement, those individuals shall first be recalled before this section applies.

C. Coordination of Employment Obligations Under the JOBS Program

At those locations where the Employer hereto is the lessee licensee of another employer which is also party to the obligations of Article II, the Employer hereto shall first honor the hiring obligation to which it should be found as a result of the lessor-licensor's agreement with the Union. Thereafter, and at all other locations covered by this Article, the Employer hereto shall follow the obligations of Section A and B above.

D. Employer-Wide Panel Rights to Signatory Operations

Each Employer also agrees to extend employer-wide panel rights to its signatory operations pursuant to Article XVII. Accordingly, within forty-five (45) days of the effective date of the Agreement, a laid-off employee may revise his panel form for any purpose, in addition to his annual right of revision under Article XVII (d).

CPCC to the newly created "Enlow Fork Mining Company." After the 1988 agreement was signed, Consol stopped referring to the mine as Bailey 2 and started referring to it as the Enlow Fork Mine.

Prior to April 18, 1990, when the Union made its information request, a newspaper article in the Washington, Pennsylvania Observer-Reporter disclosed that the companion operation of Bailey 1 would not be run by Respondent; but that "Enlow Fork Mining Company, a subsidiary of DuPont Energy Company" would be announcing the opening of the mine "informally referred to as Bailey 2 in the past." This specific revelation caused the Union to investigate whether the hiring was being conducted in accordance with article II. On April 16, Yankovich wrote to B. R. Brown and requested information to show that the employees at the Bailey Mine were being hired in accordance with article II. On May 4, Respondent informed the Union that inasmuch as Bailey Mine is an operation of CPPC, not Respondent, neither the NBCWA of 1988 nor its article II applied to the hiring at Bailey Mine.

By letter of April 18, the Union requested information from Respondent regarding each company in which Respondent plays a role or has an interest, including Consolidation Coal Company, CPCC, Enlow Fork, and DuPont Energy Company and any other subsidiary or affiliate of Respondent operating and/or controlling coal lands in Pennsylvania. The documents requested by the Union include, among others, leases, subleases, mining permits, and annual returns for employee benefit plans. The Union also inquired about the identity of the officers, directors and management representatives, customers and insurers of the Respondent and its subsidiaries, and/or affiliates as well as information regarding hiring procedures and transfer of personnel between the listed companies. The Union letter also set a date of compliance, May 6, after which it said a failure to respond would be considered a refusal.

On April 19, Local Union 6321 filed grievance 90-17 against Respondent at its Robena Preparation Plant. This grievance alleged that Respondent, by and through CPCC, Enlow Fork, DuPont Energy Company, and its other subsidiaries and affiliates, violated articles I, Ia, II and any other applicable sections by refusing to recognize panel rights of union members. On April 20, Local Union 1980 filed an identically worded grievance, grievance 90-36, against Respondent at the Dilworth Mine. Both grievances were denied by Supervisor of Industrial and Employee Relations Kathleen P. Kimbrough.

On May 7, District 4 President Yankovich telephoned Kimbrough to emphasize the Union's need for the information before processing the grievances to the third step of the grievance procedure. Kimbrough stated that she did not know whether Respondent would provide the requested information and refused to waive time limits on the grievances while Respondent decided on its course of action.

On May 10 and 14 respectively, third-step grievance meetings were held and Yankovich perused the information request. He stated that the information was necessary to determine whether Respondent violated article II of the contract; however, Respondent refused to comply and took the position that the Union must either arbitrate or drop the grievances without the benefit of the information. Respondent also

refused a request to consolidate both grievances for arbitration.

On June 8 the arbitration hearing for grievance 90-17 was held. The arbitrator determined that Respondent was required to furnish the Union with the requested information and remanded the case back to the third step of the grievance procedure. He specifically noted that the question of whether the Act was violated was not before him, and stated that the fact that a charge alleging a violation of Section 8(a)(5) for failure to provide the information had been filed by the Union had no bearing on the arbitration case.

Respondent then filed a lawsuit in the United States District Court for the Western District of Pennsylvania at civil action 90-1443, and moved to vacate, in part, the arbitrator's award. The Union filed a counterclaim seeking to enforce the arbitrator's award. These actions are pending in the Federal court.

In June 1990, the Union filed a related suit at civil action 90-0969, to compel the joint participation of Respondent, CPCC, and Enlow Fork in the processing of the two grievances discussed here. Pursuant to discovery in this action, the Union served Respondent, CPCC, and Enlow Fork with interrogatories and requests for production of documents.

On September 9, Yankovich met with Respondent's manager of industrial relations, Ronald Likar, for the purpose of viewing some of the documents described in the arbitrator's order, however, the parties could not agree on a confidentiality agreement and the Union was not permitted to take possession of any of the documents. The defendants in the Federal court action filed answers to interrogatories in November. Thereafter, in response to the requests for production of documents, certain documents were produced; however, the documents produced were subject to a confidentiality agreement whereby the Union was not permitted to use any of the material marked "CONFIDENTIAL" for any purpose other than the Federal court action.

At the hearing in the present case, on February 11, 1991, Respondent agreed that the Union could use the information and documents produced in the Federal court action for the performance of its duties as the exclusive collective-bargaining representative of Respondent's employees covered by the NBCWA of 1988. During the course of the hearing the parties also agreed to a procedure whereby any and all the requested information yet outstanding would be identified.

This was accomplished in a 48-page specific but summarized "check list" format filed by the Union on February 28, 1991, and it is received into evidence as Charging Party's Exhibit 26. On March 14, 1991, the Respondent filed a response which is identified as Respondent's Exhibit 16 and received into evidence.

By pleading dated March 25, 1991, the Union filed a reply. In turn, Respondent filed a supplemental response on April 11, 1991, to explain why it did not use the checklist formate in an attempt to narrow the issues.

Subsequently provided additional information was the subject of any agreement between the Respondent and Union on April 12, 1991, and it is received into evidence as Charging Party's Exhibits 16 through 25.³

³ C.P. Exhs. 16 (one single document: 008458-008462), 17 (one single document: 008465-008467), 18 (one-page handwritten note: 008468), 19 (second page of two-page memo prepared by Buck

Continued

Otherwise, the Respondent admits that some specific information and documents still have not been provided in response to the Union's June 18, 1990 letter, but it contends that such information is not necessary for or relevant to the performance of the Union's collective-bargaining obligations and the processing of the two pending grievances.

III. DISCUSSION

On brief the Respondent agrees that the necessity and relevance of the information requested is normally a primary issue in a case of this nature. It contends, however, that the information sought here does not meet this test because the request is not premised on the processing and presentation of the underlying grievances, because these matters were taken from arbitration to the United States district court on the Charging Party's own initiative, that the Federal court now has jurisdiction of both the substantive and collateral discovery of documentation and information in the pending Federal court proceeding and that the information thereby is no longer necessary and relevant to the presentation of the pending grievances.

The Respondent's contentions completely miss the thrust of this proceeding. This is a complaint by the Regional Director for the Board under the provisions of the National Labor Relations Act and it stands independent of any rights of the Charging Party to pursue other legal remedies. Respondent's plea could have some relevancy at the compliance stage in this proceeding, but it has no bearing at all on the question presented by the complaint which is directed at the issue of whether Respondent violated the Act in the spring of 1990 when it failed and refused to comply with the union information request.

As summarized in the related proceeding decided June 7, 1991, it is well established that as part of its duty to bargain in good faith, an employer must comply with a union's request for information that will assist the union in fulfilling its responsibilities as the employees' statutory representative, *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967); *Detroit Edison v. NLRB*, 440 U.S. 301, 303 (1979), including information relevant to both contract administration and contract negotiation, *Leland Stanford Jr. University*, 262 NLRB 136, 139 (1982), *enfd.* 715 F.2d 473 (9th Cir. 1983).

The standard applied in determining relevancy in these circumstances requires that the information have some bearing on the issue for which the information is requested and be of probable or potential relevance to the Union's duties. *Pfizer, Inc.*, 269 NLRB 916, 918 (1984).

The instant proceeding has nothing to do with the substantive and ultimate merits of the grievances but deals only with Respondent's admitted failure at the time of the information request and its admitted subsequent failure, up to and including this time it filed its brief, to fully comply.

The issue in this proceeding is tied into the Union's need for information regarding Respondent's apparent relationship

to operations which would tend to provide employment opportunities within the framework of the Union's collective-bargaining agreement with the Respondent, operations which Respondent or its parent or affiliated companies have attempted to exclude from the terms of the agreement.

Respondent failed to comply in a timely manner to the initial information request, and I find that its subsequent piecemeal disclosure of dribs and drabs of information at each successive stage of the Union's efforts, including the grievance-and-arbitration procedures, the Federal court procedure, and the initial stages of this administrative court proceeding, does nothing to mitigate or satisfy its primary and preexisting duties to bargain in good faith. Respondent did not meet its obligation in a timely manner. See *EPE, Inc.*, 284 NLRB 191 (1987), and, accordingly, the Respondent must be found to be in violation of the Act unless it shows that the Union and the General Counsel have failed to show the necessity and relevancy to the Union's collective-bargaining function of the information requested by the Union and also has failed to establish even a "reasonable belief" that Respondent and Enlow Fork were operating as a single employer.

As stated in *Bohemia, Inc.*, 272 NLRB, 1128 (1984), a union must generally establish the relevancy of information regarding an employer's potential single employer or alter ego relationship with another entity. This burden was applied in *Maben Energy Corp.*, 295 NLRB 149 (1989), a case similar to the instant case, inasmuch as it involved an information request by the United Mine Workers pursuant to article II of the 1988 agreement. There, the Board found that where a union seeks information to establish an alter ego or single employer relationship, it is not required to prove the existence of such a relationship, rather, it is sufficient "that General Counsel has established that the union had an objective factual basis for believing" that one entity is an "alter ego or single employer" of the other.

Here, I am persuaded that the Union is shown to have had a clear objective basis for its request for information. In *Maben Energy*, *supra*, the Board found that the Union's showing amply demonstrated probable and potential relevance of the requested information in fulfilling its statutory representative duties. The union, as here, requested specified information from respondent employer in order "to effectively administer and monitor important contractual rights and obligations"; "to determine the extent if any of the interrelationship between signatory companies and non-signatory companies for the purposes of contract administration and bargaining"; "to determine whether the listed employers constitute a joint employer or single employer or *alter ego*"; and because the information could impact on the important contractual rights including seniority, panel and recall, and job security bidding rights.

Here, in order to pursue its grievances filed under articles I, Ia, and II of the contract, the Union sought information to establish that Respondent, CPCC, Enlow Fork, and any other subsidiary or affiliate operates as a joint or single employer with Respondent. The Union's objective belief that Respondent, by and through various other entities, is seeking to avoid its contractual obligations was based on numerous bits of information, much of it information generated by Respondent itself as well as information that was part of the public record or information which appeared in other publicized accounts.

Hyler on January 9, 1990: 008469), 20 (first and fifth pages of five-page memo prepared by Greg Dixon on December 26, 1989: 008470-008471), 21 (two pages from memo prepared by Greg Dixon on January 2, 1990: 008472008473), 22 (one-page memo: 008475), 23 (one-page memo typed by "mm": 008479), 24 (one single document: 008480-008481), and 25 (one-page memo) (missing sheet attachment): 008482).

Despite the fact that in 1988 Respondent's president had specifically recognized that the article II JOBS provisions were applicable to the Bailey Mine, on May 4, 1990, the Union was informed that the Bailey Mine was not an operation of Respondent but solely an operation of CPCC. Because of various newspaper articles, intercompany newsletters, and other documents, however, the Union understood that it was part of the Respondent's operations. For example, Bailey Mine is listed as part of Respondent's Eastern Region Washington Operations in several publications of Respondent's newspaper and on interoffice memoranda regarding the terms and conditions of employment of the employees at Bailey Mine. In one issue of Consol News, B. R. Brown, in a message from the chairman, enumerated the achievements of Respondent's marketing department in cultivating customers for the coal from Bailey Mine and in a corporate profile of Respondent in the October 1988 issue of Coal, Respondent is credited with building the largest underground coal mine (Bailey) in the Western Hemisphere. Newspaper articles monitored by the Union consistently referred to "Consolidation Coal Company's Bailey Mine" and the mine was named for Respondent's former president, Ralph Bailey.

The Union also became aware of several instances of interchange among supervisors at Respondent's Dilworth Mine and supervisors at Bailey Mine. Until late 1989 Respondent's plans to expand the Bailey were self-described with references to the additional mine under construction as Bailey 2. Also, U.S. Department of Labor Mine Safety and Health Administration reports also referred to Consol Bailey 2 Mine and described occurrences on slope 2.

A further basis for the Union's belief in an apparent relationship between Respondent, CPCC, and Enlow Fork is the physical outlay of the Bailey Mine and the Enlow Fork Mine. Both mines are entered via a common entrance. Coal exits the mine via the same slope and is dumped on a common belt. Moreover, these entities were known to jointly sell the coal produced by the mines, and it appeared the Respondent and CPCC have jointly agreed to sell coal from Bailey Mine. In addition, Enlow Fork has contractual relationships with Respondent and CPCC whereby these companies, which have the "necessary experience and personnel" will perform services for Enlow Fork. The Union is aware that Respondent, CPCC, and Enlow Fork all receive mail at the same address.

Under these circumstances, I conclude that the General Counsel has shown that the Union had a reasonable basis for the potential relevance for the requested information concerning the single, joint employer, or alter ego relationships and that the information is relevant to a determination of whether Respondent violated the contract. As discussed above, the Respondent otherwise is shown to have failed at all times to fully satisfy its obligation to bargain in good faith by timely satisfaction of the Union's information requests and, accordingly, I conclude that the Respondent is shown to have violated Section 8(a)(1) and (5) of the Act as alleged.

Finally, I also conclude that the Respondent has persisted both on brief and in its uncooperative response to the procedures proposed and followed by the Union by means of Charging Party's Exhibit 26 for identification of outstanding information not otherwise yet disclosed, to needlessly burden the whole process with repeated and unfounded "relevance" contentions.

There is no need for this administrative court to assume the burden of examining what purports to be over 7000 pages of documentation. Here, the Charging Party has the right to review the broad category of information requested so that it may select what it believes to be relevant and necessary for presentation in any followup procedures related to the noted grievance proceedings. Questions regarding the actual relevance of information sought to be relied on can be justified at that point and I see little danger of any attempt by the Union to needlessly burden any record by the attempted introduction of irrelevant material.

Respondent's continued self-serving insistence that it "does not believe" material is required or relevant has gone beyond the pale of legitimate argument. As enumerated by the Charging Party, the Respondent admits the existence of specific documents relevant to the Union's request which it has not provided the Union in its response Exhibit 16 regarding a mining contract; employee benefit plan; names and addresses of common owners, supervisors, managers, and industrial relations personnel; and names and addresses of entities. It also has admitted that some disclosed reports coal sales agreements are only representative samples.

Inasmuch as the Respondent has created the overall situation in which it now finds itself, it cannot be heard to complain that it has some further rights that entitle it to be less than fully forthcoming in its disclosures to the Union. Accordingly, the remedy section of this decision will provide for the prompt disclosure of all the requested information specifically listed by the Charging Party as well as the imposition of a "broad" remedial order.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce as alleged.
2. The Union is a labor organization as alleged.
3. The Respondent has failed and refused to bargain in good faith with the Union by failing and refusing to furnish the Union with certain requested information, as described in the above decision, which was and is necessary and relevant to the Union's performance of its function as the exclusive bargaining agent of the unit employees in violation of Section 8(a)(1) and (5) of the Act.

THE REMEDY

Having found that Respondent has engaged in unfair labor practices, it is recommended that the Respondent be ordered to cease and desist therefrom and to take the affirmative action described below which is designed to effectuate the policies of the Act.

With respect to the necessary affirmative action, it is recommended that Respondent be ordered to cease and desist from engaging in such conduct or in any other manner interfering with employee rights and to turn over to the Union all the requested information described above and as specifically enumerated in Charging Party's Exhibit 26 and to post the attached notice.

In this proceeding, it is considered necessary that a broad order be issued. This conclusion is reached because of the Respondent's persistence in refusing and avoiding any reasonable or timely good-faith effort to satisfy an information request that has been clearly established to be valid under

current and applicable Board law. Any matters of purported confidentiality can be considered and accommodated, if necessary, at the compliance stage of the proceeding.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended⁴

ORDER

The Respondent, Consolidation Coal Company, Pittsburgh, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain in good faith with United Mine Workers of America, by failing and refusing to furnish the Union with certain requested information, as described in the above decision, which was and is necessary and relevant to the Union's performance of its function as the exclusive bargaining agreement agent of unit employees.

(b) In any other manner interfering with, restraining, or coercing the employees in the exercise of the rights guaranteed them by Section 7 of the Act.

⁴If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish the Union within 20 days with all the requested information as described in the above decision.

(b) Post at its facilities in Pittsburgh, Pennsylvania, copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 6, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

⁵If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."